72

(2)

No. 06-1484

FILED
OCT 19 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

DONALD K. KLEPPER,

Petitioner,

v.

The CITY OF PAGE, an Arizona municipal corporation; et al.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR REHEARING

DONALD K. KLEPPER
P.O. Box 4152
Missoula, MT 59806
(406) 550-2919
Pro Se Petitioner

STATEMENT PURSUANT TO RULE 44.2

Plaintiff Donald K. Klepper, *pro se,* petitions for a rehearing of an order denying a petition of a writ of certiorari based on *"intervening circumstances of a substantial or controlling effect".*

PARTIES TO THE PROCEEDING

The CITY OF PAGE, Arizona, an Arizona municipal corporation; J. Dean Slavens and Judy Slavens, husband and wife; Wes Berry and Erminia Berry, husband and wife; Dan Brown and Janet Brown husband and wife; John Kocjan; William R. Robinson and Alice Robinson, husband and wife.

TABLE OF CONTENTS

Page

STATEMENT PURSUANT TO RULE 44.2 i

PARTIES TO THE PROCEEDINGS ii

TABLE OF AUTHORITIES..... v

PETITION FOR REHEARING
STATEMENT OF THE FACTS 1

GROUNDS FOR PETITION REHEARING 3

CONCLUSION..... 5

CERTIFICATE OF COUNSEL 8

APPENDIX

Letter from U.S. Supreme Court, Office of the Clerk, William K. Suter denying petition for writ of certiorari,
Dated 10/01/07 ..... 1a

Waiver, Supreme Court of the United States, of response to petition for writ of certiorari, No. 06-1484
Dated 07/10/07 ..... 2a

Case distribution schedule docket info
Dated 06/27/07 ..... 4a

TABLE OF CONTENTS—Continued

Page

Copy of Donald K. Klepper's canceled Check No. 1039, Processed by the Court on 5/25/07 ..... 5a

Copy of Donald K. Klepper's canceled Check No. 1039, Processed by the Court on 05/25/07 ..... 6a

Letter from U.S. Supreme Court, Office of the Clerk, Gail Johnson, Dated 05/10/07 ..... 7a

Letter from Donald K. Klepper to the U.S. Supreme Court, Office of the Clerk, Gail Johnson, Dated 04/25/07 ..... 9a

Letter from Donald K. Klepper to the U.S. Supreme Court, Office of the Clerk, Gail Johnson, Dated 03/26/07 ..... 11a

Letter from U.S. Supreme Court, Office of the Clerk, Gail Johnson, Dated 03/15/07 ..... 13a

TABLE OF AUTHORITIES

Page

COURT RULES

Sup. Ct. R. 33.1 2

Sup. Ct. R. 33.1(g)(i) 3, 6

Sup. Ct. R. 14.1(c) 4

Sup. Ct. R. 14.3 5

Sup. Ct. R. 14.4 5

Sup. Ct. R. 44.2 i

PETITION FOR REHEARING
STATEMENT OF THE FACTS

Fact 1: On March 12, 2007, the Petitioner signed and transferred by certified mail a writ of certiorari. The writ was received by the Court on March 15, 2007.

Fact 2: The writ was returned to the Petitioner by the Clerk of the Court on March 15, 2007, with instructions on changes that had to be made to the document. Included in that letter of instruction was the following statement: "When making the required corrections to a petition, no change to the substance of the petition may be made."

Fact 3: On March 26, 2007, eleven (11) days following receipt of the letter of instruction, the Petitioner sent a letter of inquiry seeking to clarify the number of pages that would be allowed in rewriting the document. The petitioner stated:

> I have begun work on the new filing and plan to have it ready by May 1, 2007. You stated in your letter, "When making the required corrections to a petition, no change to the substance of the petition may be made." My original petition was filed under what I perceived the *in forma pauperis* rules to be, and I filed a five (5) page petition. Since I now need to

> file the petition consistent with the Rule 33.1, may I correctly assume that I am now allowed the thirty (30) pages specified in this Rule? Could you also explain what the Court deems a substantive change to be?

Fact 4: By April 25, 2007, no response was received by the Petitioner so an additional letter was included with the forty (40) copies of the writ of certiorari, and it contained the following statement.

> Also included is a copy of the inquiry I sent the Court questioning the number of pages I was allowed to utilize in my statement. I did not receive a response and therefore, I have made no changes to the substance of the petition. I have only made the required corrections and therefore my presentation is limited to the original five pages.

On May 10, 2007, the Court notified the petitioner that the entitled case was filed on March 12, 2007, and placed on the docket May 10, 2007, as No. 06-1484. The date of filing was the same date that the original writ was received by the Court prior to the mandated corrections.

On May 25, 2007, the Court processed the petitioner's three hundred dollar ($300.00) check;

thus, establishing the petitioner's status as paid petitioner (i.e., non indigent).

GROUNDS FOR PETITION REHEARING

1. The March 15, 2007, letter of instruction from the Office of the Clerk of the U.S. Supreme Court stated the following: "The page limit of the text of a petition for a writ of certiorari is 30 pages. Rule 33.1(g)(i)."

2. The writ that was returned to the Petitioner which only had five (5) pages could have been expanded to the allowed thirty (30) pages if the Petitioner's letter of inquiry had received a response. That response could have clarified the fact that if the Petitioner obtained paid status, additional pages could be added.

3. The Petitioner inquired in his letter of March 26, 2007, "Could you also explain what the Court deems a substantive change to be?" That inquiry would be necessary in order for the Petitioner to ascertain whether substantive change applied to both additional pages or additional legal arguments.

This petition for rehearing is intended to seek permission of the Court to utilize the additional pages allowed under paid status and thus be able to address arguments that could not be included in the writ because of the lack of the required number of pages to do so. Clearly, there

are demonstrative intervening circumstances in procedure that require the rewriting and rehearing of this writ as well as other substantial grounds that could not have been previously presented because of the five (5) page restriction placed on the March 12, 2007, writ of certiorari.

If the Petitioner filed this petition for rewriting and rehearing with no record of having raised this issue with the Court prior to the Court's decision to deny the writ of certiorari, then the circumstances would be different, but that is not the case. Twice this issue was a subject of inquiry, and no response was provided by the Court.

4. Under Rule 14.1(c) **Content of a Petition for a Writ of Certiorari**. "If the petition exceeds five (5) pages, a table of contents and a table of cited authorities" were required. The March 12, 2007, writ filed by the Petitioner was five (5) pages or less thus the table of contents and table of cited authorities was not necessary. That being true, there was no need for the Court to send instructions for doing so if it were not believed that there was a possibility the number of pages would be expanded. However, the statement in the letter of instructions, "When making the requested corrections to a petition, no change to the substance may be made," created an impossible situation. First, it granted up to thirty (30) pages, then foreclosed any possibility that they could be written. That prompted the Petitioner to send a

letter of inquiry to the Court, but no response was received from the Court.

Rule 14.3 states: "A petition for a writ of certiorari should be stated briefly and in plain terms and may not exceed the page limitations specified in Rule 33."

Rule 14.4 states: "The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition."

How could this possibly occur in the five (5) pages of the March 12, 2007, writ submitted to the Court that was prohibited from expansion to the full thirty (30) pages? Solomon-like decisions had to be made, and some points stated in the decision by the appellant court could not even be addressed thus assuring that the writ would fail.

CONCLUSION

This petition for a rehearing should be granted on procedural grounds. It is true the Petitioner did misinterpret his status when he filed his original writ on March 12, 2007. The Petitioner limited himself to the pages written at that time while sending a check to the Court for three hundred dollars ($300.00) which he was required to do for paid petitioner status. The Clerk

then informed the Petitioner that "The page limit of the text of a petition for a writ of certiorari is thirty (30) pages. Rule 33.1(g)(i)." In the same letter the Clerk informed the Petitioner that "When making the required corrections to a petition, no change to the substance of the petition may be made."

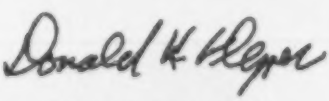
The Petitioner filed an inquiry on March 26, 2007, and asked for clarification of what appeared to be two (2) opposing statements. None was received, and the Petitioner was forced to leave the five (5) pages intact without utilizing the additional twenty-five (25) pages available to a paid petitioner.

Truly, this is an extraordinary circumstance created by the Petitioner's misunderstanding of the Court's rules, but it was a correctable error early in the process had the Petitioner received the clarification that he requested in writing. To maintain the integrity of the U.S. Federal judicial system, it seems logical and legally correct that the Court must insure that parties who petition the Court receive fair and impartial treatment in the review of their claims. Fair in the instant case would mean granting the Petitioner the right to utilize the full thirty (30) pages allowable to paid petitioners so that he has the opportunity to present additional relevant factors which were excluded by page limitations.

The U.S. Supreme Court is the People's Court and provides the opportunity for respite for

parties who may have been treated differently under settled law. The U.S. Supreme Court is the strand of judicial DNA that is the blueprint for the review of actions taken by others that are inconsistent with applicable and settled law in other courts. To avoid the risk of undermining the public confidence in the judicial process, parties must be given a chance to present their arguments on the merits. In this case, the Petitioner was prevented from doing so.

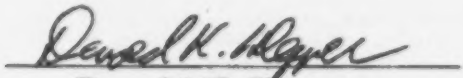
Respectfully submitted,



Donald K. Klepper
P.O. Box 4152
Missoula, MT 59806
(406) 550-2919
Pro Se Petitioner

CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.



Donald K. Klepper

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

October 1, 2007

Mr. Donald K. Klepper
P.O. Box 4152
Missoula, MT 59806

Re: Donald K. Klepper
v. City of Page, Arizona, et al.
No. 06-1484

Dear Mr. Klepper:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

s/ William K. Suter
William K. Suter, Clerk

WAIVER

Supreme Court of the United States
No. 06-1484

Donald K. Klepper (Petitioner) v. City of Page, an Arizona municipal corporation, et al. (Respondents)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check one of the following boxes:

☒ Please enter my appearance as Counsel of Record for all respondents.

☐ There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):

_____

_____

I certify that I am a member of the Bar of the Supreme Court of the United States (Please explain name change since bar admission:

Signature s/ Roy G. Weatherup

Date: July 10, 2007

(Type or print) Name Roy G. Weatherup
☒Mr. ☐Ms. ☐Mrs. ☐Miss

Firm Lewis, Brisbois, Bisgaard & Smith, LLP

Address 221 N. Figueroa St., Ste. 1200

City & State Los Angeles, CA Zip 90012

Phone (213) 250-1800

SEND A COPY OF THIS FORM TO PETITIONER'S COUNSEL OR TO PETITIONER IF PRO SE. PLEASE INDICATE BELOW THE NAME(S) OF THE RECIPIENT(S) OF A COPY OF THIS FORM. NO ADDITIONAL CERTIFICATE OF SERVICE IS REQUIRED.

Cc: Mr. Donald K. Klepper
P. O. Box 4152
Missoula, MT 59806

Obtain status of case on the docket. By phone at 202-479-3034 or via the internet at hhtp://www.supremecourtus.gov. Have the Supreme Court docket number available.

LATEST DOCKET INFO:

No. 06-1484	
Title:	Donald K. Klepper, Petitioner v. City of Page, Arizona, et al.
Docketed:	May 10, 2007
Lower Ct:	United States Court of Appeals for the Ninth Circuit
Case Nos.:	(05-15614)
Decision Date:	November 14, 2006
Rehearing Denied:	December 27, 2006

~~Date~~	~~~~Proceedings and Orders~~~~
Mar 12 2007	Petition for a writ of certiorari filed. (Response due June 11, 2007)
Jun 27 2007	DISTRIBUTED for Conference of September 24, 2007.

~~Name~~~~~~~~~~~~~~~~Address~~~~~~~~~~~~~

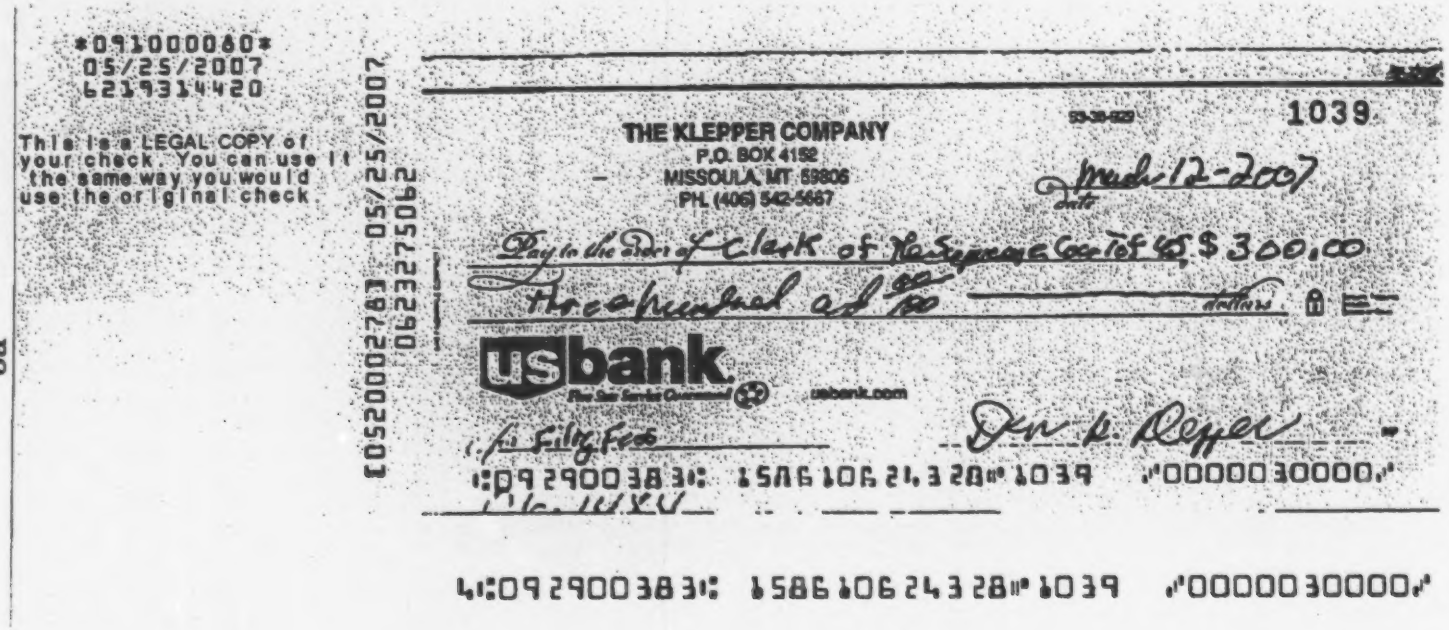
Attorneys for Petitioner:

Donald K. Klepper	P.O. Box 4152 Missoula, MT 59806

Party name: Donald K. Klepper

Don K. Klepper, Ph.D.
P.O. Box 4152
Missoula, Montana 59806

5a



091000080
05/25/2007
6219314420

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

052000278 05/25/2007 0623275062

THE KLEPPER COMPANY
P.O. BOX 4152
MISSOULA, MT 59806
PH. (406) 542-5667

1039

Date March 12-2007

Pay to the Order of Clerk of Montgomery County Court of $ 300.00

Three hundred and 00/100 dollars

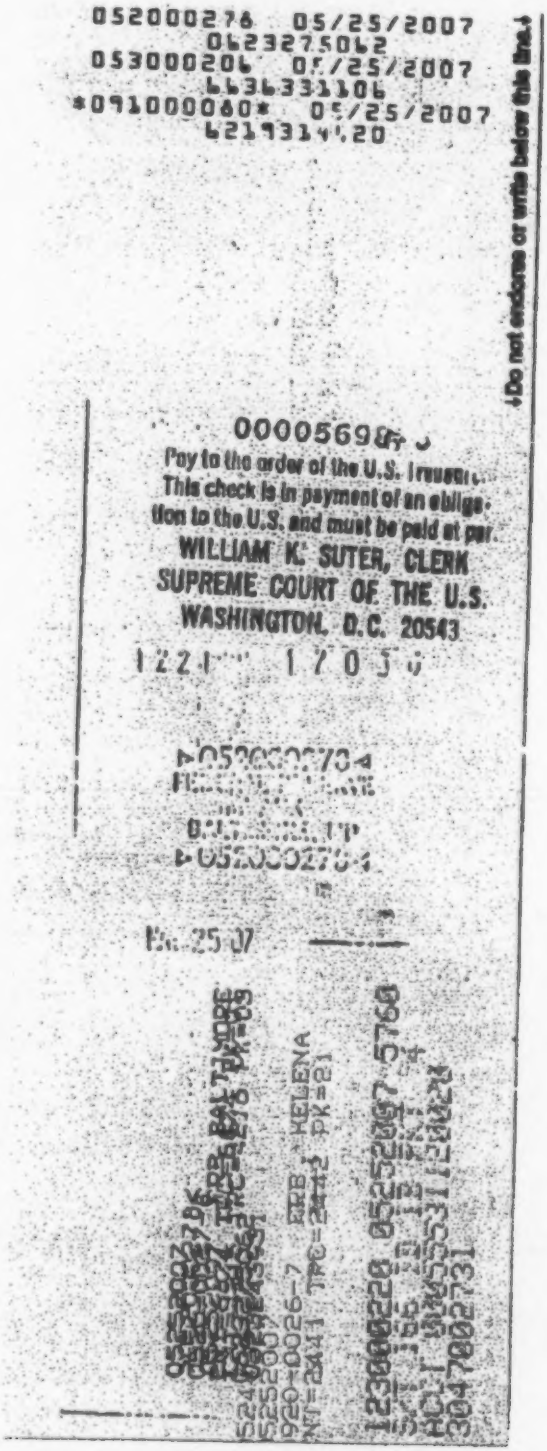
usbank
usbank.com

For Filing Fees

Don R. Klepper

⑆092900383⑆ 1586106243 28⑈ 1039 ⑈000003000⑈

⑆092900383⑆ 1586106243 28⑈ 1039 ⑈000003000⑈


052000276 05/25/2007
062327506 2
053000204 05/25/2007
663633110 6
091000060 05/25/2007
621931 4.20
(Do not endorse or write below this line.)
00005698
Pay to the order of the U.S. Treasu
This check is in payment of an obliga-
tion to the U.S. and must be paid at par.
WILLIAM K. SUTER, CLERK
SUPREME COURT OF THE U.S.
WASHINGTON, D.C. 20543
1221 1705
25 07

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

May 10, 2007

Mr. Donald K. Klepper
P.O. Box 4152
Missoula, MT 59806

Re: Donald K. Klepper
v. City of Page, an Arizona municipal corporation, et al.

Dear Mr. Klepper:

The petition for a writ of certiorari in the above entitled case was filed on March 12, 2007 and placed on the docket May 10, 2007 as No. 06-1484.

Forms are enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

William K. Suter, Clerk

by

s/ Gail Johnson
Gail Johnson, Case Analyst

Enclosures

April 25, 2007

Gail Johnson
Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543-0001

RE: Donald K. Klepper v. The City of Page, Arizona, et al.

Dear Ms. Johnson:

I have made the required corrections to the petition mandated by your letter and rules of the Court. This parcel contains 40 copies of the Writ of Certiorari along with the sample copy that you sent me to guide me on my journey. I have included a separate proof of service for the Court that includes proof of service for three copies of the petition that I mailed to opposing counsel. Also included is a copy of the inquiry I sent the Court questioning the number of pages I was allowed to utilize in my statement. I did not receive a response and therefore, I have made no changes to the substance of the petition. I have only made the required corrections and therefore my presentation is limited to the original five pages.

Thank you for the opportunity to make the corrections to the petition and for sending me the sample copy Writ.

Sincerely,

Donald K. Klepper /s/
Donald K. Klepper

Enclosures

Don K. Klepper, Ph.D.
P.O. Box 4152
Missoula, Montana 59806
Phone: (406) 550-2919
E-Mail: klep@msn.com

Clerk Gail Johnson
Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543-001

March 26, 2007

Re: Donald K. Klepper v. City of Page, Arizona, et al.

Dear Clerk Johnson:

Thank you for your letter dated March 15, 2007, which clarifies the instructions for filing a Writ of Certiorari and for the example copy of a Writ of Certiorari filed with the U.S. Supreme Court.

I thought I followed the correct instructions which I obtained on-line, but I misinterpreted what my status is in terms of a petitioner. I assumed that, since I have been unable to get employment since my termination, I would fall within *in forma pauperis* status. Based on your correspondence I have begun to prepare my Writ of Certiorari under the guidelines provided by the Court for a regular petitioner. Unlike the Appellant Court there seems to be no special provisions for *pro se* litigants in

terms of form in the U.S. Supreme Court. Again, I mistakenly assumed that there was and that, as I did in the Ninth Circuit, I could file an informal petition.

I have begun work on the new filing and plan to have it ready by May 1, 2007. You stated in your letter, "When making the required corrections to a petition, no change to the substance of the petition may be made." My original petition was filed under what I perceived the *in forma pauperis* rules to be, and I filed a five (5) page petition. Since I now need to file the petition consistent with the Rule 33.1, may I correctly assume that I am now allowed the thirty (30) pages specified in this Rule? Could you also explain what the Court deems a substantive change to be?

Thank you again for your assistance with this filing.

Sincerely,

Don K. Klepper /s/
Don K. Klepper, Ph.D.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

March 15, 2007

Donald K. Klepper
P.O. Box 4152
Missoula, MT 59806

RE: Donald K. Klepper v. The City of Page, Arizona, et al.

Dear Mr. Klepper:

Returned are copies of the petition for a writ of certiorari in the above-entitled case postmarked on March 12, 2007 and received on March 15, 2007, which fails to comply with the Rules of this Court.

If you intend to pay the $300 docket fee, the petition must be in booklet format and on paper that measures 6 1/8 by 9 1/4 inches. Rule 33.1(a).

The appendix to the petition as required by Rule 14 must be in booklet format and on paper that measures 6 1/8 by 9 1/4 inches. Rule 33.1(a).

Rule 33.1(c) prohibits the use of spiral, plastic, metal or string bindings. Staples may be used, at least two, along the left margin covered with tape.

The petition must bear a suitable cover consisting of heavy paper, front and back. Rule 33.1(e).

The caption of the case must appear as appropriate in this Court. Rule 34.1(c).

The cover of the petition must bear the nature of the proceeding and the name of the Court from which the action is brought. Rule 34.1(d).

The text of the petition and appendix must be typeset Roman 11-point or larger type with 2-point or more leading between lines. The typeface of footnotes must be 9-point or larger with 2-point or more leading between lines. Please note that computer generated "Roman" font is smaller than traditional Roman type and you may need to increase the font size. Rule 33.1(b).

All of the pages in the petition and appendix must contain margins of at least three-fourths of an inch on all sides. The text field, including footnotes, may not exceed 4 1/8 by 7 1/8 inches. Rule 33.1(c).

The text of the document must appear on both sides of the pages. Rule 33.1(b).

Question(s) presented must appear on the very first page of the petition. Rule 14.1(a).

The second cover page must be removed from the petition. The questions presented for review

must appear on the first page immediately following the cover of the petition. Rule 14.1(a).

The questions presented for review must be followed by the list of parties (if all do not appear on the cover), corporate disclosure statement (if applicable), table of contents, table of authorities, citations of the official and unofficial reports of opinions and orders entered in the case, statement of the basis for jurisdiction, constitutional provisions, treaties, etc., statement of the case, reasons for granting the writ, and the appendix. Rule 14.1.

The pages containing the questions presented for review through table of authorities should be numbered (i), (ii), (iii), etc. The following pages should be numbered 1, 2, 3, etc.

The page limit of the text of a petition for a writ of certiorari is 30 pages. Rule 33.1(g)(i).

The order(s) of the U.S. Court of Appeals for the Ninth Circuit and the U.S. district court must be included in the appendix. Rule 14.1(i) Each order must be reproduced so that is complies with Rule 33.1.

The lower court caption, showing the name of the issuing court or agency, the title and number of the case, and the date of entry, must be included with the opinion in the appendix to the petition. Rule 14.1(i)(ii).

The proof of service must be separate from the petition, not with it. See Rule 29.5.

Kindly correct the petition so that it complies in all respects with the Rules of the Court and return it to this office promptly so that it may be docketed. Unless the petition is received by this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Kindly correct the petition and appendix so that it complies in all respects with the Rules of the Court and return it to this office promptly so that it may be docketed. Unless the petition is received by this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Three copies of the corrected petition must be served on opposing counsel. Rule 29.3.

This office shall retain one copy of the petition and your (FILLIN) in the amount of $300.00 in expectation of timely receipt of a properly prepared petition.

Enclosed are a copy of the Rules of the Court and memorandum concerning the preparation of a paid petition in booklet format.

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,
William K. Suter, Clerk
By:

Gail Johnson
(202) 479-3038

Enclosures